



Fw: OIL AND GAS: EPA moving in on state regulation of drilling

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OIL AND GAS: EPA moving in on state regulation of drilling (Thursday, January 26, 2012)

Mike Soraghan, E&E reporter

U.S. EPA's decision to truck water to four homes in Dimock, Pa., is just its latest move to bypass state regulation of natural gas drilling and hydraulic fracturing.

From the suburbs of Fort Worth, Texas, to Pavillion, Wyo., to northeastern Pennsylvania, EPA officials have taken increasingly bold steps in drilling pollution cases, implying or even proclaiming that state officials did not do enough to protect their own residents.

SPECIAL REPORT

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A new wave of drilling, fueled by the practice some call "fracking," is promising prosperity and energy security for the country. E&E investigates whether anyone is ensuring it's done right. **Click here** to read the report.

It is generating friction between EPA and leaders in some of the states. One state official called EPA's understanding of the Dimock situation "rudimentary." Another called EPA's Texas move a "frontal assault" on drilling.

To the oil and gas industry, EPA's moves are a sign of the Obama administration's underlying hostility to domestic petroleum production and signal interest in increased federal regulation of hydraulic fracturing.

"EPA is thinking very creatively about hydraulic fracturing," said John Riley, a lawyer in Bracewell & Giuliani's Austin office, who is involved in the suburban Fort Worth case, but commented only on the broader trend. He said the agency is using legal authority that is "questionable or even dubious."

But some residents and activists have applauded EPA officials for taking on a powerful industry when state government was unable or unwilling.

"For some of us, they are our only hope," said Sharon Wilson, an activist with Earthworks in Texas, who is also involved in the suburban Fort Worth case.

Publicly, President Obama has tried to walk a middle path regarding the boom in domestic oil and gas drilling. In his State of the Union speech Tuesday he stressed support for production, but he stressed it must be done safely. That middle path is not an easy one. Environmentalists are unsettled by his support for drilling, and the industry does not believe him.

Republicans in Congress have also taken notice. They have accused the administration of doublespeak and they have scheduled a hearing for next week in the House Science Committee to lambaste the agency's investigation in

Wyoming. House Oversight and Government Reform Chairman Darrell Issa (R-Calif.), the Republicans' chief inquisitor, is ramping up a probe into how EPA and DOE have dealt with hydraulic fracturing and shale gas drilling. Issa says the agency is not living up to EPA Administrator Lisa Jackson's stated support for state-based regulation. State officials are the primary regulators of the country's boom in onshore oil and gas drilling, and industry likes it that way. Industry officials say state officials more so than federal or local authorities, have the most local expertise. Unlike EPA, state oil and gas agencies are not charged exclusively with protecting the environment and human health. State laws order most of them to balance regulation with promoting oil and gas development. And they frequently have close ties to the local industry (*Greenwire*, Dec. 19, 2011). Environmental groups and some Democrats have criticized state regulation of drilling. Democrats in Congress, such as Sen. Bob Casey (D-Pa.) and Diana DeGette (D-Colo.) have introduced legislation to repeal an environmental exemption and give EPA more oversight of hydraulic fracturing. But the legislation is staunchly opposed by Republicans and failed to advance even when Democrats controlled Congress.

Wyo. probe, Texas dustup

The Wyoming investigation began in 2008, before Obama won the presidency. People in Pavillion, a small community in the middle of the state, had complained for years about problems with their water, but Wyoming oil and gas officials had taken no action against drillers, said Deb Thomas, an activist with the group Pavillion Area Concerned Citizens.

After initial testing, federal officials recommended in 2010 that some well owners use alternate sources of water for drinking and cooking. But the agency's draft findings, released last month, yielded mixed results.

EPA scientists concluded that hydraulic fracturing fluid had contaminated the aquifer under Pavillion, interrupting the industry refrain that there has never been a documented case of water contamination from fracturing. But they said those chemicals had not reached the drinking water wells of people in the community. And EPA officials said contaminants did not exceed drinking water standards.

State officials have criticized EPA's findings. Gov. Matt Mead (R) called them "scientifically questionable." State Oil and Gas Supervisor Tom Doll suggested EPA might have accidentally contaminated the aquifer itself.

Mead has said the state should be in charge of the investigation. But critics say the state missed its chance when it failed to act before 2008.

"For over a decade the state failed to investigate, identify and address the contamination issues and huge human health impacts occurring in the Pavillion area," Thomas said. "Our members believe Governor Mead and the state agencies should be thankful that the EPA came to Wyoming's aid with the substantial funds and scientific expertise that is needed."

EPA officials have been less critical of Wyoming officials. The chronology in the report makes no mention of state efforts, starting only when people in Pavillion complained.

In Texas, EPA pulled no punches when it overrode state officials to issue an emergency order against Range Resources Corp. in December 2010. The agency alleged that the company contaminated at least two water wells with methane and benzene.

Dallas-based EPA Regional Director Al Armendariz acted under the emergency provisions of the Safe Drinking Water Act, which require EPA to determine that local authorities have not done enough to protect human health. When an Armendariz aide notified then-Railroad Commission Chairman Victor Carrillo, the state's top oil and gas regulator, Carrillo replied with an email calling the federal action "premature."

Armendariz forwarded Carrillo's reply to EPA headquarters officials with a single-word message: "Stunning."

In a hearing called shortly thereafter, the Railroad Commission exonerated Range. One member of the commission called EPA's action "a frontal assault on domestic natural gas production."

Still, EPA has not backed off from its emergency order. The case is pending in federal court, awaiting a ruling from an appeals court.

EPA has also weighed in on proposed new drilling rules in New York, suggesting improvements the state Department of Environmental Conservation could make and questioning whether the state has the resources to enforce the rules it is proposing. And in Pennsylvania last year, EPA pressed state officials to do more monitoring of Marcellus Shale drilling wastewater. The pressure came after *The New York Times* reported wastewater was being sent to treatment plants unable to handle the radioactive material it contains. Pennsylvania officials later reported radioactivity tests came back "at or below" safe levels (*Greenwire*, March 8, 2011).

The agency is doing a multi-year study of the safety of hydraulic fracturing. It will supplant a 2004 study that relied largely on reports from state agencies to conclude hydraulic fracturing presented little risk. This time, EPA has said it will test on its own.

'Out on a limb'?

Dimock is the first of the interventions to take place even after a state investigated and punished a company for environmental violations.

The Pennsylvania Department of Environmental Protection shut down some of Cabot Oil & Gas Co.'s wells, fined

the company and negotiated a \$4.1 million settlement in which all of the affected homeowners got at least two times the value of their home, and kept any mineral rights. The state's investigation began after residents in the small community began complaining of cloudy, foul-smelling water in 2008. Cabot also delivered water to affected homeowners until November, when state regulators agreed it could stop. The residents say their aquifer is still contaminated.

Since November, EPA has flip-flopped several times about how to handle Dimock. First, it said the water posed no health risk, then that it merited more study. Earlier this month, the agency promised to deliver water but reneged within 24 hours.

Then, last week, EPA flipped again. The agency announced it would test 60 wells and deliver water to four homes. Cabot denies contaminating the wells, saying most wells in the region were laced with methane long before the arrival of drilling. In a letter to Jackson yesterday, Cabot CEO Dan Dinges said "EPA's actions in Dimock appear to undercut the President's stated commitment to this important resource, even in light of EPA's regulatory mission." The EPA interventions have generated some barbed comments between EPA officials and Pennsylvania DEP Secretary Michael Krancer. First, Krancer sent EPA regional officials a letter stating the agency had only a "rudimentary" understanding of the Dimock situation. He also derided EPA's Pavillion report as a "rush to conclusions." The next day, Jackson told reporters his words were "puzzling" and not helpful to people in Dimock. John Hanger, who oversaw the Dimock case as head of the Pennsylvania DEP under Democratic Gov. Ed Rendell (D), said he is all for more testing and monitoring. But he said what EPA has found does not necessarily point at contamination from drilling.

"It's unusual for EPA to insert themselves. It does demonstrate the restraint EPA has shown in the past," Hanger said. "Perhaps it demonstrates how far out on a limb they are now."

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